

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0506-0026

Case Title:

Ferguson Enterprises Inc.

Reporting Office:

Detroit, MI, Resident Office

Subject of Report:

Interview of [REDACTED] and [REDACTED] Detroit Housing Commission.

Activity Date:

February 26, 2010

Reporting Official and Date:

[REDACTED] RAC

18-MAR-2010, Signed by: [REDACTED] RAC

Approving Official and Date:

[REDACTED] SAC

18-MAR-2010, Approved by: [REDACTED] ASAC

SYNOPSIS

02/26/2010 - U.S. EPA CID Special Agent (SA) [REDACTED] and HUD OIG SA [REDACTED] interviewed [REDACTED] Director, Detroit Housing Commission (DHC), and [REDACTED] Director of Development, DHC, regarding allegations of contaminated soils being transported and disposed of at the Garden View Estates (GVE) site which is controlled by DHC.

DETAILS

On February 26, 2010, U.S. EPA CID Special Agent (SA) [REDACTED] and HUD OIG SA [REDACTED] interviewed [REDACTED] Director, Detroit Housing Commission (DHC), and [REDACTED] Director of Development, DHC, regarding allegations of contaminated soils being transported and disposed of at the Garden View Estates (GVE) site which is controlled by DHC. After being informed of the identity of the interviewing agents and the purpose of the interview, [REDACTED] and [REDACTED] provided the following information:

SA [REDACTED] asked [REDACTED] to explain the legal ownership of the GVE site. [REDACTED] explained that the DHC and HUD have a "Declaration of Trust" which is a document that spells out the understanding and covenant which DHC has with the federal government over the use and funding of the site. The Declaration of Trust supplements the Annual Contributions Contract (ACC) between HUD and the DHC. The title to the property for GVE was transferred to the DHC by the City of Detroit and in turn the DHC will be transferring portions of the property to individual purchasers of the residential units which are being constructed. The DHC also holds a ground lease with the developers of certain portions of the property. In this situation DHC remains the owner of the ground and the developer owns the structures which they build.

[REDACTED] and [REDACTED] both agreed that DHC is building the various structures on the site on the behalf of HUD. [REDACTED] pointed out that HUD has oversight of the funds being used for the construction of the site. The HUD funds are placed in a trust controlled by the DHC, and it is these funds which are used to pay the developers of the site. [REDACTED] added that it is clear that HUD has an interest in the project.

[REDACTED] went on to say that the legal mechanism for the construction of the site is the ACC, as they are administering HUD funds for the project. The mission of the DHC is to serve the residents of the City of Detroit and accomplish this by using HUD funds. Every time DHC closes a real estate transaction at the site they have to amend the ACC to include that transaction. [REDACTED] commented that from day one DHC and HUD have had oversight of the project.

DHC first learned that soils had been brought onto the GVE site during a meeting with Habitat staff

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in February of 2009. [REDACTED] made reference to a January 5, 2009, Habitat Monthly Report which details steps taken to rectify the problem and emphasized to the interviewing agents that the area of the site which was impacted was just a triangular portion along Grandmont Street.

SA [REDACTED] informed [REDACTED] and [REDACTED] that the investigators had developed information that at least a hundred loads of soil had been transported onto the site, that the soils had been dumped and distributed into the existing soils. [REDACTED] expressed [REDACTED] shock at this news and said that it was the first time [REDACTED] had heard this. [REDACTED] explained that soils had been scrapped and piled in the middle of the site. SA [REDACTED] reiterated that the soils had been brought onto the site from other locations and was not existing soils. [REDACTED] said [REDACTED] was not aware of this information either.

[REDACTED] and [REDACTED] confirmed that Xcel did not notify the DHC of soils being brought onto the site by anyone, including Ferguson Enterprises Inc. The only other person who may have been notified at DHC would be [REDACTED]. When asked whom from the Detroit Building Authority should have notified DHC of the hauling of soils to the site, [REDACTED] and [REDACTED] replied [REDACTED] or [REDACTED]. [REDACTED] pointed out that the DHC and DBA staff have regular meetings on the GVE project and no one brought this issue up. [REDACTED] stated that it was the responsibility of the DBA to notify the DHC of the importation of soils onto the site.

[REDACTED] explained how there was a change order for \$700,000 submitted to fund the removal of "garbage" from the excavation of the retention pond.

Currently the developers of the site are conducting soil sampling per phase of construction, starting with the ten model homes and continuing to the fifty five homes to be built next. The DHC has begun the process to request Brownfield funding for the site. The costs of sampling and possible removal of contaminated soils will be projected. Nortstar has added costs for remediation of their portion of the site into their contract and thus budget.

The current developer of the residential portion of the site is Garden Development LLC which is a conglomerate of Windham, Belmont and Harvard Engineering. Garden Development representatives have determined that there is not an issue with overburdened soils on the front (Joy Road) portion of the site. The overburden in the area of the retention basin has been taken care of. Garden Development has hired Testing Consultants & Engineers (TCE) to conduct soil sampling and analysis as well as ASTI to pursue potential Brownfield funding.

The DHC notified the DBA of the dumping of imported soils on the Grandmont/Ashbury Park section of the GVE site during a meeting in February of 2009. [REDACTED] explained that they provided the DBA with the Habitat report for January of 2009 which documented the dumping by FEI. At this meeting was [REDACTED], [REDACTED] and [REDACTED] representing the DBA. No one at this meeting mentioned ever having a similar problem with FEI or any other contractor. [REDACTED] response to the incident was to say that Xcel was no longer the DBA's contractor thus the DBA was not liable. The DHC staff wanted the DBA to contact FEI to make them clean up the dumped soils however the DHC ended up doing so themselves. [REDACTED] provided SA [REDACTED] with a binder of documents related to this incident. (See Attachment)

SA [REDACTED] asked if the DHC staff were aware of any instances where the contracted security firm was

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not at the GVE site. [REDACTED] remarked that [REDACTED] had been out at the site many times at night and there was no security present. The official entry gate to the site is at Tireman Street and this is where the security officer is supposed to be. A sign in log is supposed to be maintained by security at this location.

ATTACHMENT

DHC Documents re: Soil Dumping

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